In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 694

SACRAMENTO TELECASTERS, INC., PETITIONER

v.

MCCLATCHY BROADCASTING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

This case involves a decision of the Federal Communications Commission denying, without hearing, a petition filed by McClatchy Broadcasting Company ("McClatchy") seeking reconsideration of a Commission order which granted Sacramento's application for modification of its construction permit for a new television station to specify a new transmitter site and antenna system. On appeal, the court below reversed the Commission, on the ground, *inter alia*, that McClatchy should have been afforded an evidentiary hearing on its pleading.

416858—57

Petitioner contends (Pet. 8–9) that the decision below enunciates a general rule that petitions for rehearing filed under Section 405 of the Communications Act of 1934 require the same mandatory hearings as protests filed under Section 309(c) of the Act. While such a holding would present an important question under the Communications Act, we do not believe that the decision below declares any such general rule. Although the court initially refers to McClatchy's petition as one for rehearing filed under Section 405 (Pet. App. 4a, 5a), the latter parts of the opinion make several references to it as a protest filed under Section 309(c) (Pet. App. 6a–10a). In the concluding paragraph, the court speaks of McClatchy's "protest," and states that "[t]he Commission should conduct an evidentiary hearing on the *protest*" (Pet. App. 10a, emphasis supplied). While the court cites cases under Section 309(c), it does not purport to announce any general rule, and seemingly rests its holding on the particular facts of the instant case.

In these circumstances, we believe that the court below either acted upon the assumption that McClatchy's pleading was a protest under Section 309 (c) or held that the Commission had abused its discretion by failing to hold an evidentiary hearing to consider McClatchy's allegations. Under either view, the correctness of the decision below raises no question of sufficient importance to warrant review by this

Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

WARREN E. BAKER,
General Counsel,
Federal Communications Commission.

FEBRUARY 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957